

United States District Court
Southern District of Texas

ENTERED

April 26, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SANDBOX LOGISTICS, LLC; AND OREN §
TECHNOLOGIES, LLC, §

Plaintiffs,

V.

Case No. 4:17-cv-00589

PROPPANT EXPRESS INVESTMENTS, \$
LLC; PROPPANT EXPRESS SOLUTIONS, \$
LLC; and LIBERTY OILFIELD \$
SERVICES, LLC, \$

Defendants.

PATENT CASE – SCHEDULING ORDER

It is hereby **ORDERED**, after consultation with the parties, that the following schedule will apply in this case:

0	May 25, 2017 [per Order-Doc. No. 2]	Scheduling Conference (see #32 re: MEDIATION)
1	June 8, 2017 [2 weeks after Scheduling Conf.]	<p>Comply with P.R. 3-1 and P.R. 3-2: Parties to make disclosure of asserted claims and preliminary infringement contentions & make document production.</p> <p><i>After this date</i>, it is necessary to obtain leave of court to add and/or amend infringement contentions, pursuant to Patent Rule P.R. 3-7.</p> <p>Join additional parties. It is not necessary to file a motion to join additional parties before this date. Thereafter, it is necessary to obtain leave of court to join additional parties.</p> <p>Add new patents and/or claims for patents-in-suit. It is not necessary to file a motion to add additional patents or claims before this date. Thereafter, it is necessary to obtain leave of court to add patents or claims.</p>
2	July 6, 2017 [6 weeks after # 1]	<p>Comply with P.R. 3-3 and 3-4: Parties to serve preliminary invalidity contentions and make document production. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to P.R. 3-7.</p> <p>Add any inequitable conduct allegations to pleadings. Before this date, it is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings. Thereafter, it is necessary to obtain leave of court to add inequitable conduct allegations to pleadings.</p>
3	July 20, 2017 [2 weeks after # 2]	Comply with P.R. 4-1: Parties' exchange of proposed terms and claim elements needing construction.
4	August 10, 2017 [3 weeks after # 3]	<p>Comply with P.R. 4-2: Parties' exchange of preliminary claim constructions and extrinsic evidence.</p> <p>Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).</p>
5	September 7, 2017 [9 weeks after # 2; 17 weeks after Scheduling Conf.]	Deadline to comply with P.R. 4-3: Filing of joint claim construction and pre-hearing statement.

		Disclosure of parties' claim construction experts & service of FED. R. CIV. P. 26(a)(2) materials
6	September 7, 2017 [matches # 5]	<p>Deadline for all parties to file amended pleadings (pre-claim construction). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. (It will be necessary to file a Motion for Leave to Amend after this deadline.)</p> <p>NOTE: If the amendment would affect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to P.R. 3-7 irrespective of whether the amendment is made prior to this deadline.</p>
7	September 21, 2017 [2 weeks after # 6; generally 19 weeks after Scheduling Conf.]	Responses to amended pleadings due.
8	October 5, 2017 [2 weeks after # 7; 21 weeks after Scheduling Conf.]	Discovery deadline on claim construction issues (see P.R. 4-4)
9	October 12, 2017 [22 weeks after Scheduling Conf.]	Each party to provide name, address, phone number, and curriculum vitae for up to three (3) candidates for a court-appointed special master (see FED. R. Civ. P. 53) or court-appointed expert (see FED. R. Ev. 706), with information regarding the nominee's availability for <i>Markman</i> hearing or other assignments as deemed necessary by the court. The parties shall indicate if they agree on any of the nominees.
10	October 12, 2017 [22 weeks after Scheduling Conf.; generally matches #9]	Deadline for parties (optional) to provide Court with written tutorials concerning technology involved in patent in issue. If a special master or court-appointed expert is hereafter selected, the parties will provide each tutorial to the master or expert.
11	November 2, 2017 [7 weeks after # 5; 3 weeks after # 10; generally 24 weeks after Scheduling Conf.]	Comply with P.R.4-5 (a): the party claiming patent infringement must serve and file a Claim Construction Opening Brief with its supporting evidence. The moving party is to provide the Court with 2 copies of the binders containing their Opening Brief and exhibits. If a special master or court-appointed expert has been appointed, the moving party must provide the Opening Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.
12	November 16, 2017 [2 weeks after # 11]	Comply with P.R. 4-5(b): Responsive Brief and supporting evidence due to party claiming patent

		infringement. The moving party is to provide the Court with two (2) courtesy copies of the Responsive Brief and exhibits. If a special master or court-appointed expert has been appointed, the nonmoving party must supply a copy of its Response on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.
13	November 30, 2017 [1 week after # 12] [extended one week due to Thanksgiving holiday]	<p>Comply with P.R. 4-5(c): Party claiming infringement shall file a Reply Brief and supporting evidence on claim construction. The moving party is to provide the Court with two (2) copies of the Reply Brief and exhibits.</p> <p>If a special master or court-appointed expert has been appointed, the moving party must provide the Reply Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.</p> <p>Parties to file a notice with the Court stating the estimated amount of time requested for the Claim Construction (<i>Markman</i>) Hearing. The Court will notify the parties if it is unable to accommodate this request.</p>
14	December 27, 2018 [1 week before Markman Hearing]	Parties to submit Claim Construction Chart in WordPerfect 8.0 (or higher) format in compliance with P.R. 4-5(d).
15	January 11, 2018 [approx. 15 weeks after # 5; approx. 5 weeks after # 13; 32 weeks after Scheduling Conf.]	Claim Construction (<i>Markman</i>) Hearing at ____ p.m. at the United States District Court, 601 Rosenberg, 6th Floor, Galveston, Texas
16	February 22, 2018 [<i>Markman</i> ruling within 6 weeks after <i>Markman</i> hearing]	<p>Court's Decision on Claim Construction (<i>Markman</i> Ruling)</p> <p><u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u></p>
17	March 15, 2018 [10.5 mos. after Scheduling Conf.; 4 weeks after <i>Markman</i> Ruling (# 16)]	<p>Deadline for final infringement contentions and to amend pleadings on infringement claims.</p> <p>NOTE: Except as provided in P.R. 3-6, if the amendment would affect preliminary or final infringement contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.</p>

18	March 15, 2018 [matches # 17; 10.5 mos. after Scheduling Conf.]	Comply with P.R.3-8. All parties furnish documents and privilege logs pertaining to willful infringement.
19	March 29, 2018 [2 weeks after #17; 6 weeks after <i>Markman</i> Ruling (# 16)]	Deadline for final invalidity contentions and to amend pleadings on invalidity claims. NOTE: Except as provided in P.R. 3-6, if the amendment would affect preliminary or final invalidity contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
20	April 26, 2018 [4 weeks after # 19; 11.5 mos. after Scheduling Conf.; 8 weeks after <i>Markman</i> Ruling(#16)]	Date for designation of expert witnesses on non-construction issues on which the party has the burden of proof (“BOP”) and service of expert witness reports.
21	May 24, 2018 [4 weeks after # 20]	Date for designation of responsive expert witnesses on non-claim construction issues on which party does <i>not</i> have BOP, and service of responsive expert witness reports. [Refer to Fed. Rules of Civil Proc. for information required.]
22	July 19, 2018 [14.5 mos. after Scheduling Conf.; 8 weeks after #21; 5 months after <i>Markman</i> Ruling (#16)][8 weeks after 21]	Discovery Deadline on all issues. <u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u>
23	August 16, 2018-Motions; [4 weeks after #22] September 6, 2018-Responsive Briefs; [3 weeks] September 13, 2018-Reply Briefs [1 week]	Dispositive and Non-Dispositive Motions And Briefing deadlines
24	October 18, 2018 [9 weeks after motions in # 23; 17 mos. after Scheduling Conf.]	Court’s ruling on all pending motions
25	November 15, 2018 [4 weeks after # 24; at least 2 weeks before Docket Call]	Joint Pretrial Order due including all components required by Local Rules and this Court’s Procedures (such as witness lists, exhibit lists and copies of exhibits (see # 29 below), and (a) in bench trials, proposed findings of fact and conclusions of law with citation to authority and (b) for jury trials, joint proposed jury instructions with citation to authority, and proposed verdict form).

		Statement of Expected Length of Trial: 8 days (assumes 6 hours with jury per day).
26	November 15, 2018 [same day as JPTO (# 25) — but filed separately]	Written notice due for request for daily transcript or real time reporting of trial proceedings.
27	November 15, 2018 [same day as JPTO (#25)]	Motions in Limine due.
28	November 15, 2018 [same day as JPTO (# 25)] November 22, 2018 [1 week after JPTO filed (#25)]	Video and Deposition Designations due. Each party who proposes to offer a deposition by video must file a disclosure identifying the line and page numbers to be offered. All other parties will have 1 week to file a response requesting cross designation line and page numbers to be included. Each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.
29	November 22, 2018 [1 week after JPTO filed (# 25)]	Objections to opponents' proposed witnesses, proposed exhibits, designated deposition testimony, and any other matters due.
30	December 6, 2018 [1 day before Docket Call — 3 p.m.]	The parties are directed to confer and advise the Court about which limine requests the parties agree to.
31	MEDIATION is required by December 6, 2018	<i>The Court refers most patent cases to mediation. The parties should discuss proposed mediators and timing of mediation prior to the Scheduling Conference and be prepared with recommendations for the Court.</i> Mediation to be completed by this date. The parties must select a mediator for this case. The parties and mediator must comply with S.D. TEXAS LOCAL RULE 16.
32	December 7, 2018 [18.5 mos. after Scheduling Conf.; 20 mos. after case filed]	9:00 a.m. Docket Call/ Final Pretrial Conference at the United States District Court, 515 Rusk Street, Houston, Texas.
33	December __, 2018 [generally, the first day of jury trial]	9:00 a.m. JURY SELECTION at the United States District Court

<p>34 December __, 2018 [Generally, the first day of jury selection #33]</p> <p>As necessary, the parties and the Court will address consolidation and/or staging of this trial and the trial in <i>SandBox Logistics, LLC v. Grit Energy Solutions, LLC</i>, Case No. 3:16-cv-00012, at a future date.</p>	<p>JURY TRIAL (9:30 a.m.) commences, subject to Court's criminal docket</p>
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OTHER REQUIREMENTS and LIMITATIONS:

- (a) **All depositions** to be read into evidence as part of the parties' case-in-chief must be **EDITED** (*with* notice to opposing parties) to exclude all unnecessary, repetitious, and irrelevant testimony. **ONLY** those portions relevant to the issues in controversy may be read into evidence.
- (b) The Court will refuse to entertain any **motion to compel discovery** filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Southern District of Texas Local Rules 7.1, 7.2.
- (c) The following **excuses will neither warrant a continuance** nor justify a failure to comply with the discovery deadline:
 - (i) the fact that there are motions for summary judgment or motions to dismiss pending;
 - (ii) the fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
 - (iii) the failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (d) **Exhibits**
 - (i) Each party must provide the Court with a courtesy copy of exhibits and exhibit lists. The presiding judge's preferred format for Exhibit Lists is available on the Court's website at www.txs.uscourts.gov under Court Procedures.
 - (ii) If exhibits are voluminous, provide only specific pages that pertain to the issues on the two courtesy copies. The original exhibits that are agreed upon by the parties, should be ready to be tendered to the Clerk of the Court at the beginning of trial. Other exhibits that are admitted during trial should be tendered to the Clerk of the Court immediately after admission.

- (iii) The parties are to label all proposed exhibits with the following information on each label: Designation of Plaintiff's or Defendant's Exhibit Number and Case Number. For example:

Plaintiff's Exhibit
Exhibit No. _____
Case No. _____

Defendant's Exhibit
Exhibit No. _____
Case No. _____

SIGNED at Galveston, Texas, this 25th day of April, 2017.

George C. Hanks, Jr.
George C. Hanks, Jr.
United States District Judge